

TREND RESOURCES LIMITED

IBLA 82-671, IBLA 82-672

Decided June 17, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of 81 oil and gas leases terminated by operation of law. U-35029, U-35531, et al. 1/ (U-942).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

1/ IBLA 82-671, an appeal from BLM's Mar. 22, 1982, decision, involves the following leases on which the rental payment was due Feb. 1: U-35531, U-35534, U-35538 through U-35543, and U-35545 through U-35554. IBLA 82-672, an appeal from BLM's Mar. 19, 1982, decision, involves the following leases on which the rental payment was due Jan. 1: U-35029 through U-35047, U-35049 and U-35050, U-35052 through U-35058, U-35061 through U-35090, U-35138, and U-35270 through U-35273. The cases have been consolidated because they involve the same issues.

APPEARANCES: Stanla Kaye, Lease Records Supervisor, Trend Resources Limited, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Trend Resources Limited (Trend) has appealed the March 19 and March 22, 1982, decisions of the Utah State Office, Bureau of Land Management (BLM), denying its petition for reinstatement of 81 oil and gas leases which terminated by operation of law on January 1, 1982, and February 1, 1982, respectively (see note 1), because of appellant's failure to submit timely rental payments as required by 30 U.S.C. § 188(b) (1976). The rental payments were received by BLM on March 1, 1982, 59 days after the due date for the January leases, and 28 days after the due date for the February leases.

The basis for reinstatement of leases in such cases is set out in 30 U.S.C. § 188(c) (1976), which provides that a petition for reinstatement may be granted if the rental has been paid or tendered within 20 days of its due date and it is shown to the Secretary's satisfaction that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In support of its appeal, Trend has submitted the following explanation:

1. Failure to make timely payments of delay rentals occurred due to a computer conversion between two incompatible systems, which resulted in deactivation of the old system before the new system was fully operative. In addition, Trend has had hardware problems with the new system that have contributed to system shutdowns for repairs. Both of these factors contributed to a failure of our land control systems for delay rentals on the referenced leases, a situation over which Trend has no reasonable control.

2. Due to the occurrences stated in number 1 above, the failure to make timely rental payments was not discovered until on or about February 18, 1982.

3. Subsequent thereto, several telephone calls were made by the undersigned and other Trend personnel to the Utah State BLM Office, Accounting Section, and finally, to the office of the Chief, Minerals Section, in order to determine in what manner payment should be made. On February 22, 1982, the undersigned received a return call from an employee calling on behalf of the Chief, Minerals Section. The employee advised that the 20-day rule required that payment should have been received by February 20, 1982, in order that consideration might be given to a petition for reinstatement. When the undersigned stated that February 20 was a Saturday and that the next following business day was Monday, February 22 (the date of the telephone conversation) and asked whether receipt of rental payments by the end of the business day on February 22 would satisfy the 20-day requirement, the BLM employee advised that the 20-day period had expired.

The question was put again and the BLM employee reiterated that the rental payment would not be accepted because the 20-day period had expired.

4. Because Trend's management had determined to proceed with a petition for reinstatement, the undersigned sent a telex request for permission to make payment to the Chief, Minerals Section on the morning of February 23. That afternoon, the undersigned received a telephone call from an employee of that office, who advised that the request was denied because payment should have been received by February 22, 1982.

5. On February 25, 1982, Trend Resources Limited sent to the BLM its check number 8037 to cover, among other things, the rentals on the referenced leases. Payment was returned by the BLM on March 1, 1982.

6. On March 3, 1982, Trend submitted a Petition for Reinstatement together with the rental check. This appeal is taken for the denial of that petition.

7. Trend Resources Limited asserts that failure to make timely payment of the rentals was justifiable, due to circumstances beyond its control and not due to lack of reasonable diligence.

8. Furthermore, Trend Resources Limited asserts that it made every reasonable effort to determine the procedures to petition for reinstatement and to pay the rentals within the 20-day period set forth in the regulations and that, in doing so, it relied totally on the advice of the BLM personnel. To penalize Trend for relying upon the judgment of the BLM staff would place an unreasonable and unfair burden of knowledge and performance on any individual or firm who acts based upon erroneous or incomplete procedural information.

In its statement of reasons relating to the January leases, appellant omits the allegations as to its reliance on erroneous information supplied by BLM, but admits that it discovered on or about February 16, rather than February 18, the failure of its computer to make the necessary payments on the January leases. Thus, it was aware of the computer failure as of February 16.

Unfortunately, there is absolutely nothing this Board can do to provide aid or comfort to the appellant at this late date. The statute, 30 U.S.C. § 188 (1976), is clear and unambiguous. The regulations, 43 CFR Subpart 3108, are clear and of longstanding duration. And the decisions of this Board for the past 10 years, commencing with Louis Samuel, 8 IBLA 268 (1972), and Monturah Co., 10 IBLA 347 (1973), have been equally clear in

defining what does, and what does not, constitute justification for reinstatement. As we said in Monturah, *supra* at 348, quoting Samuel, "What is clearly not covered are cases of forgetfulness, simple inadvertence, or ignorance of the regulations." The decision went on to say:

Companies are not held to a higher standard of diligence by the mere fact of their corporate structure. But, by the same token, they cannot hide behind the bulk and complexity of their organizations, so as to make "justifiable" for them actions which would not be held to be justifiable for individual lessees.

In the present case, appellant seeks to place the blame for its untimely payment first upon a computer conversion breakdown and then, after the error was discovered, upon BLM. In similar cases, the Board has held that:

[T]he fact that appellants have business procedures which normally insure prompt rental payments does not establish that they have exercised reasonable diligence in a particular case. * * * [Citations omitted.] The unexplained error in appellants' computer system does not justify late payment. In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. * * * Appellants are ultimately in control of and are responsible for the performance of the business machines they use.

Melbourne Concept Profit Sharing Trust, 46 IBLA 87, 90-91 (1980). No evidence has been presented in this case indicating the cause of the computer failure or the reason for the lack of a reliable backup system. *Cf.* Dome Petroleum Corp., 59 IBLA 370, 88 I.D. 1012 (1981).

However, even if the foregoing burden of proof could be sustained, appellant has another serious deficiency to overcome; namely, that it did not immediately take advantage, within the 20 days provided by the statute, of its fortuitous discovery on or about February 16 of the computer malfunction. Had appellant acted swiftly at that point, it had approximately 6 days in which to make payment and to petition for reinstatement at least of its February 1 leases. But, instead, appellant simply made phone calls to BLM to ask what to do and did not actually mail its payment until February 25.

A far more aggravated situation from a lessee's standpoint occurred in Ram Petroleums, Inc., & Ramoco, Inc., 37 IBLA 184 (1978), where appellant alleged that an employee actually lied to her employer in stating that she had mailed the rental payment on time. The Board found that the employer's reliance on the employee's statement was insufficient. The Board said: "We find no basis to stray from our earlier rulings that the inadvertence or negligence of a lessee's employee does not justify reinstatement of a lease terminated for failure to make a timely rental payment." That case was affirmed on appeal by two circuit courts. *See* Ram Petroleums, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981), and Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1980).

As for appellant's argument that to "penalize" it for relying on the advice of BLM personnel "would place an unreasonable and unfair burden of knowledge and performance on any individual or firm who acts based upon erroneous or incomplete procedural information," it is clearly appellant's burden to know the Department's regulations. 44 U.S.C. § 1507 (1976); Overthrust Oil & Gas Corp., 52 IBLA 119, 88 I.D. 38 (1981). Reliance on the erroneous advice of a BLM employee is not sufficient to relieve appellant of an obligation imposed by statute. Alva F. Rockwell, 47 IBLA 272 (1980). As district court Judge Pratt said in affirming a somewhat analogous case, Reichold Energy Corp., 40 IBLA 134 (1979), "In summary, plaintiff made a series of mistakes in a business that has exacting requirements and as a consequence plaintiff has been penalized. We will not permit the plaintiff to shift the blame for its troubles to the Secretary of the Interior." Reichold Energy Corp. v. Andrus, No. 79-1274 (D.D.C. Apr. 29, 1980).

[1] An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. We hold here that reasonable diligence is not shown where a computer failure to make timely payment by February 1 is discovered on or about February 16; a check is not subsequently mailed until February 25; and payment is not actually received by BLM until March 1.

[2] Moreover, since the requirements for reinstatement of an oil and gas lease terminated by operation of law for untimely payment of rent are statutory, the Department has no authority to reinstate a lease that has terminated for that reason, unless the payment is actually received or tendered within 20 days after the date of termination. That did not occur in this case with respect to either the January 1 or the February 1 leases, and thus, regardless of justification, the leases are not eligible for reinstatement by this Board. Shell Oil Co., 57 IBLA 63 (1981); Mobil Oil Corp., 35 IBLA 265 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

